

**STATE OF LOUISIANA**

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**NO. 2000-KA-2292**

**VERSUS**

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**COURT OF APPEAL**

**ORALENE HOLLOMON**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 413-657, SECTION "D"  
HONORABLE FRANK A. MARULLO, JUDGE

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**JAMES F. MCKAY, III**  
**JUDGE**

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(Court composed of Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr., Judge David S. Gorbaty)

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Attorney for Defendant/Appellant

## **AFFIRMED**

### **STATEMENT OF CASE**

The defendant, Oralene Hollomon, was charged by bill of information on May 8, 1999, with the attempted second-degree murder of Deshon Shelton Martin, in violation of La. R.S. 14:27(30.1). The defendant pleaded not guilty at her July 20, 1999 arraignment. A twelve-person jury found the defendant guilty of attempted manslaughter on June 12, 2000, following trial. On June 27, 2000, the defendant was sentenced to twenty years at hard labor, with credit for time served.

### **STATEMENT OF THE FACTS**

Deshon Shelton Martin, the victim, testified that on May 7, 1999, she and her husband, Ralph Martin, exited their apartment and walked passed the defendant, Oralene Hollomon, when she made a comment to Mr. Martin. The defendant told Mr. Martin something about his shirt being in his pants and that he was acting like he had a million dollars. Mrs. Martin responded by telling the defendant to leave them alone and mind her own business and that her husband might have a million dollars. Mrs. Martin and the defendant traded insults. However, the Martins continued to walk away as the exchange of insults took place. Mrs. Martin further testified that the

defendant approached her and struck her from behind. She later learned that the defendant had actually stabbed her. Mrs. Martin then gave her purse to her husband and turned to face the defendant to defend herself. Mrs. Martin testified that the defendant then pulled the shirt Mrs. Martin was wearing over her head and proceeded to stab Mrs. Martin in the face and torso. Mrs. Martin testified she could not see, and her face was covered in blood. Mrs. Martin then staggered back to her apartment leaving a blood trail along the way. Mr. Martin and a neighbor followed her to the apartment and called 911 for help. Mrs. Martin made it as far as her kitchen before she collapsed on the floor.

Judy Colmenaro, a New Orleans Police officer, was the first to arrive on the scene. She testified that when she arrived she questioned the people standing around outside, and she was directed to the Martin apartment. When Officer Colmenaro reached the apartment, she found Mrs. Martin lying on the floor. The Officer further testified that Mrs. Martin was holding her face, and it was covered in blood. Shortly after Officer Colmenaro arrived, Emergency Medical Service (EMS) arrived on the scene stabilizing the victim and transporting her to the hospital.

Joseph Metzger, an EMS technician, testified that when he and his partner arrived on the scene they found Mrs. Martin on her kitchen floor

with multiple stab wounds to her face, arm, torso, and one to her right eyeball. As a result of the stab wound to the right eyeball, Mrs. Martin wears a glass eye.

Timothy Allen, a detective with the New Orleans Police Department, testified that he responded to a radio call of a stabbing. When he arrived on the scene, Mrs. Martin was being treated by EMS. Detective Allen spoke to Mrs. Martin briefly before she was transported to the hospital. The detective was able to question Mrs. Martin again at the hospital, and she gave him the name of the defendant. The detective obtained a warrant to search the home of the defendant. Upon arriving at the defendant's home, Detective Allen informed her she was being detained for questioning regarding the stabbing on the previous day. Detective Allen advised the defendant of her Miranda rights and informed her of his intent to search her apartment. The defendant showed Detective Allen the location of the knife. The detective then asked the defendant for the clothing she was wearing at the time of the incident. She informed him that she was still wearing them and that she put on others over them to confuse the police. The New Orleans Police Department's Crime Lab Unit analyzed the clothing worn by the defendant and found traces of human blood. However, the crime lab was unable to type and match the blood to the victim because the quantity was too small.

The defendant was transported to the First District police station where she was, again, given her Miranda rights. The defendant signed a waiver of rights form and gave a recorded statement.

The victim's husband, Ralph Martin, was shown a photographic line-up from which he identified the defendant.

Dr. Mark Sheffler, the senior resident on duty in the emergency room when Mrs. Martin was taken to the hospital, testified that the victim was treated for multiple stab wounds, with the most serious being the one to her right eyeball. Mrs. Martin was hospitalized for several weeks due to the removal of her right eye and the treatment of an infection of the right orbital area.

Bernadine Davis, Rosalind Windsay, Herbert Jones, Terry Dupree, and Netricia Cummings all acted as character witnesses for the defendant. They all testified to having known the defendant since her incarceration and release from prison for her 1981 manslaughter conviction. They further testified that the defendant joined their bible study group while in prison, and she remained a faithful member for the eighteen years she had been back in society.

## **ERRORS PATENT**

A review of the record reveals no errors patent.

## **DISCUSSION**

### **ASSIGNMENT OF ERROR NUMBER 1**

In this first assignment of error, the defendant contends the evidence was insufficient to support her conviction.

The standard for reviewing a claim of insufficient evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found all of the essential elements of the offense proven beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.ED. 2d 560 (1979). The reviewing court is to consider the record as a whole and not just the evidence most favorable to the prosecution; and if rational triers of fact could disagree as to the interpretation of the evidence, the rational decision to convict should be upheld. State v. Mussall, 523 So.2d 1305 (La. 1988).

Additionally, the reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. Id. The trier of fact's determination of credibility is not to be disturbed on appeal absent an abuse of discretion. State v. Cashen, 544 So.2d 1268 (La. App. 4<sup>th</sup> Cir. 1989).

When circumstantial evidence forms the basis for the conviction, such evidence must exclude every reasonable hypothesis of innocence. La. R.S.

15:438. The court does not determine whether another possible hypothesis suggested by the defendant could afford an exculpatory explanation of the events. Rather, this court, when evaluating the evidence in a light most favorable to the prosecution, must determine whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt under Jackson. State v. Davis, 92-1623 (La. 5/23/94), 637 So.2d 1012. This is not a separate test from Jackson; instead, this test is an evidentiary guideline for the jury when considering circumstantial evidence. This test facilitates appellate review of whether a rational juror could have found the defendant guilty beyond a reasonable doubt. State v. Wright, 445 So.2d 1198 (La. 1984).

Although the defendant was charged with attempted second-degree murder, the jury returned the lesser-included offense of attempted manslaughter.

La. R.S. 14:31 defines manslaughter in part as:

A homicide which would be murder under either Article 30 (first degree murder) or Article 30.1 (second degree murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the

time the offense was committed.

When a defendant is indicted for murder and convicted of manslaughter and the evidence supports a finding of guilt on the greater offense, the Louisiana Supreme Court has held that it is not necessary to determine whether the evidence adduced at trial was tailored to the lesser-included offense. State v. Peterson, 290 So.2d 307 (La. 1974). Therefore, it can be inferred that if a defendant is indicted for attempted second degree murder, and the evidence supports that charge, but he is convicted of attempted manslaughter, then the evidence at trial does not have to be tailored to the lesser offense. La. R.S. 14:27, the attempt statute, provides that anyone who, having the specific intent to commit a crime, does or omits an act for the purpose of and directly tending toward the accomplishment of his object is guilty of an attempt to commit the offense intended; it is immaterial whether, under the circumstances, he would have actually accomplished his purpose.

In a case of attempted manslaughter, the State must show specific intent to kill. State v. Amos, 550 So.2d 272, 276 (La. App. 4<sup>th</sup> Cir. 1989). Specific intent is a state of mind which need not be proven as a fact but which may be inferred from the circumstances of the crime and the actions of the defendant. Id.



The defendant argues she was justified in her use of force against Mrs. Martin. She avers it was due in part to the vast difference in their ages. The defendant was sixty-two at the time of the incident, and Mrs. Martin was approximately thirty years old. However, the most important reason, according to the defendant, was the defendant's belief she had been cut with a razor or knife. The jury did not abuse its discretion in finding that the State proved beyond a reasonable doubt the essential elements necessary for attempted manslaughter. The jury could infer from the defendant's actions that she attempted to kill Mrs. Martin from the number of stab wounds the defendant inflicted. Additionally, the intent necessary could have been inferred from the fact the defendant had a prior conviction of manslaughter in which she inflicted only one stab wound sufficient to kill the victim. Therefore, it was reasonable for the jury to infer the defendant had to have known there was a likelihood of death given the number of wounds inflicted to Mrs. Martin. This assignment of error is without merit.

## **ASSIGNMENT OF ERROR NUMBER 2**

In her second assignment of error, the defendant contends the trial court erred in failing to allow the introduction of testimony regarding prior events between the defendant and the victim. Specifically, the defendant asserts the trial court erred in granting the State's motion *in limine*

prohibiting the introduction of testimony of the victim's alleged homosexual relationship.

Prior to trial the State filed a motion *in limine* to exclude any evidence of the victim's alleged homosexual relationship and the defendant's refusal to act as a go between as the reason for the exchange of insults that led to the stabbing incident.

La.C.E. article 404, in pertinent part, provides:

Evidence of a person's character or a trait of his character, such as a moral quality is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

...

(2)(a) Except as provided in Article 412, evidence of a pertinent trait of character, such as moral quality, of the victim of the crime offered by an accused, or by the prosecution to rebut the character evidence; provided that in the absence of evidence of a hostile demonstration or an overt act on the part of the victim at the time of the offense charged, evidence of his dangerous character is not admissible;

Evidence of the victim's dangerous character or of threats against the defendant support a plea of self-defense because this evidence is relevant to show that the victim was the aggressor and to show that the defendant's

apprehension of danger was reasonable. State v. Edwards, 420 So.2d 663 (La. 1982). In order for such evidence to be admissible, the defendant must first produce evidence that at the time of the incident the victim made a hostile demonstration or committed an overt act against the defendant of such character which would have created in the mind of a reasonable person that he was in the immediate danger of losing his life or suffering great bodily harm. State v. Gantt, 616 So.2d 1300 (La. App. 2<sup>nd</sup> Cir. 1993). An overt act includes any act by the victim which manifests to the mind of a reasonable person a present intention on his part to kill or do great bodily harm. Edwards. If the purpose of the evidence is to show that the victim was the aggressor, there is no requirement that the defendant know of the victim's prior acts or reputation; however, such evidence must be of the victim's general reputation and not evidence of specific acts or personal opinion. State v. Eishtadt, 531 So.2d 1133 (La. App. 4<sup>th</sup> Cir. 1988).

In the instant case, the defendant alleges that the victim harbored rage against her for the defendant's refusal to be a messenger for the victim and her lover. However, the defendant failed to allege or show she reasonably believed because of this rage the victim posed an imminent threat of death or great bodily harm. The defendant stated she believed the victim cut her prior to her stabbing the victim. The defendant's subjective belief that she was cut

does not seem to rise to the level necessary to create a fear of death or great bodily harm in the mind of a reasonable person. From the circumstances of the incident, we learned the victim, moments before turning to face the defendant who approached from behind, gave her purse to her husband. The victim never had the opportunity to reach for or arm herself with a weapon. The victim did admit she used her fingernails to scratch the defendant, and in response the defendant pulled out a knife and stabbed the victim several times. The victim now lives with partial sight and a glass eye. The trial court apparently believed, though not stated, the defendant failed to demonstrate the overt act on the part of the victim necessary to create the reasonable belief she was in imminent danger of death or great bodily harm. The trial court stated the planned defense was too prejudicial, and, therefore, not admissible. This assignment of error is without merit.

### **ASSIGNMENT OF ERROR NUMBER 3**

In her third assignment of error, the defendant contends her sentence of twenty years, the maximum for attempted manslaughter, is unconstitutionally excessive.

Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. State v. Sepulvado, 367 So.2d 762 (La. 1979). A sentence is

unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, is nothing more than the needless and purposeless imposition of pain and suffering, and is grossly out of proportion to the severity of the crime. State v. Labato, 603 So.2d 739 (La. 1992).

Generally, a reviewing court must determine whether the trial judge adequately complied with the sentencing guidelines set forth in La.C.Cr.P. art. 894.1 and whether the sentence is warranted in light of the particular circumstances of the case. State v. Soco, 441 So.2d 719 (La. 1983).

If adequate compliance with Article 894.1 is found, the reviewing court must determine whether the sentence imposed is too severe in light of the particular defendant and the circumstances of his case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. State v. Quebedeaux, 424 So.2d 1009 (La. 1982).

In State v. Holmes, 99-0631 (La. App. 1Cir. 2/18/00), 754 So.2d 1132, the First Circuit affirmed a twenty year attempted manslaughter sentence of a defendant who secretly followed his estranged wife and her boyfriend home, gained entrance to the home through a window, and shot them from a distance. In State v. Boyd, 95-1248 (La. App.4 Cir. 8/28/96), 681 So.2d 396, this court affirmed a twenty year attempted manslaughter

sentence of a defendant who shot the victim after a fist fight, which resulted in the victim having to wear braces on both of his legs.

In the present case, the defendant cites the trial court's interest in her prior manslaughter conviction and its lack of consideration for her age and ailing health as the reasons for her unconstitutional sentence. Though the trial court's reasoning for the sentence is not stated, it appears the court took into consideration the fact that the defendant's ailing health did not prevent her from inflicting serious and almost fatal wounds on the victim. The trial court may have also considered the fact that the defendant still has a reasonable portion of her health and strength, while the victim has to forever live with the disfigurement caused at the hands of the defendant. The defendant has not proven the trial court judge abused the liberal discretion allowed in sentencing. She has also failed to rebut the presumption that the sentence is constitutional. This assignment of error is without merit.

Accordingly, we affirm the defendant's conviction and sentence.

**AFFIRMED**

